

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 803 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

D B SOLANKI

Versus

HIGH COURT OF GUJARAT

Appearance:

MR NM KAPADIA for Petitioner

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/06/97

ORAL JUDGMENT

Heard learned counsel for the petitioner.

2. Challenge is made by the petitioner to the order dated 3rd November 1991, of this Court on its administrative side, made in the matter of departmental inquiry against the petitioner. Under the impugned order, this Court has decided that the order of suspension which was passed against the petitioner with effect from 3rd April 1992 is not wholly unjustified and the period of suspension was ordered to be treated as such and the petitioner was held to be not entitled to pay and other allowances for the said period.

3. This order has been passed after providing full opportunity of hearing to the petitioner through his advocate. Whatever submissions made by the learned counsel for the petitioner have been considered and a detailed and reasoned order has been made. It is true that in the departmental inquiry, the petitioner has been exonerated from all the three charges. However, during the pendency of departmental inquiry, the petitioner was under suspension and as such, on his reinstatement the question cropped up as to how the period of suspension has to be dealt with.

4. Rule 152 of the Bombay Civil Service Rules (hereinafter referred to as 'Rules') is the relevant provision to the controversy which has arisen in the present case. This Rule provides that when a Government servant who has been suspended is reinstated, the authority competent to order reinstatement shall consider and make a specific order regarding pay and allowances to be paid to the Government servant for the period of his absence from duty and further whether or not the said period shall be treated as a period spent on duty. Sub-rule (2) of Rule 152 of the aforesaid Rules provides that where the authority competent to order reinstatement of the delinquent officer is of opinion that the Government servant has been fully exonerated or in the case of suspension that it was wholly unjustified, the Government servant shall be given full pay and allowances to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be. Sub-rule (3) of Rule 152 of the said Rules provides that in other cases, the Government servant shall be given such proportion of pay and allowances as such competent authority may prescribe.

5. The learned counsel for the petitioner made two-fold contentions in this case. Firstly, it is contended that sub-rule (2) of Rule 152 of the aforesaid Rules has not correctly been taken into consideration.

Where a Government servant has been fully exonerated, the competent authority to order reinstatement has no option except to give him full pay and allowances to which he would have been entitled had he not been suspended. It has next been contended that the suspension of the petitioner was wholly unjustified as the petitioner has been exonerated of all the three charges. To buttress this submission, the learned counsel for the petitioner contended that the copy of the preliminary inquiry report, which was the basis for placing the petitioner under suspension, has not been given to the petitioner and as such, the suspension was wholly unjustified. In support of this contention, the learned counsel for the petitioner has placed reliance on the decision of this Court in the case of M.D. Indrodia v. State of Gujarat, & Ors., reported in 1992(1) GLH 413.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the petitioner. It is not correct to contend that in a case where a delinquent officer has been fully exonerated of the charges, the competent authority to pass the order of reinstatement has to order to pay him full salary and other allowances for the period of suspension. Sub-rule (2) of Rule 152 of the Rules deals with the absence of delinquent officer in two contingencies, i.e. the period of absence is, in one case, after dismissal and removal of the delinquent officer and in another, during the period of suspension. So, in a case where a delinquent officer is placed under suspension during pendency of departmental inquiry, on his reinstatement, may be after exoneration of charges, he will not be automatically entitled for full pay and allowances for the period of suspension. The Rule making authority has clearly made a demarcation of cases where a delinquent officer has been reinstated after exoneration in case where he was dismissed and removed from services from the case where a delinquent officer is only under suspension. For the period of dismissal and removal on full exoneration of charges there is no doubt whatsoever that a delinquent officer is entitled to full pay and allowances to which he would have been entitled had not been dismissed or removed, but in case of suspension, on his full exoneration he will not be entitled automatically for these benefits. In the case of suspension, on reinstatement, on full exoneration, the delinquent officer shall be given the full pay and allowances to which he would have been entitled had he not been suspended only in case where the authority competent to order the reinstatement is of opinion that the suspension was wholly unjustified. Mere exoneration is not

sufficient to make a delinquent officer entitled for full pay and allowances for the period of suspension to which he would have been entitled had he not been suspended. The competent authority, under the order impugned, has considered the matter and held that the suspension of the petitioner was not wholly unjustified. The learned counsel for the petitioner is unable to point out any illegality or error apparent on the face of the impugned order. It is for satisfaction of the competent authority to decide whether the suspension is wholly unjustified or not and after considering the charges framed against the petitioner as well as other material, the suspension of the petitioner was not held to be wholly unjustified, no interference of this Court calls for in the matter.

7. The other contention raised by the learned counsel for the petitioner is also devoid of any substance. In the case of S.K. Singh v. Central Bank of India & Ors., reported in 1996(6) SCC 415, the Hon'ble Supreme Court has held that necessity of non supply of inquiry report is inconsequential, if no prejudice is caused to the delinquent officer. That was the case where copy of final inquiry report was not furnished to the delinquent officer, but non furnishing the copy of the inquiry report was held to be not sufficient to vitiate the whole inquiry unless and until the delinquent officer has made out a case of causing of prejudice to him. In the present case, the learned counsel for the petitioner has even not made any whisper that any prejudice has been caused to the petitioner for non supply of preliminary inquiry report. So the case of the petitioner cannot be said to be on better footing than the case which was there for consideration before the Hon'ble Supreme Court in the case of S.K. Singh v. Central Bank of India & Ors. (supra).

8. The preliminary inquiry report loses all of its significance when the departmental inquiry is initiated against the delinquent officer. The scope and the ambit of preliminary inquiry is only to ascertain prima-facie whether any case has been made out for initiating departmental inquiry against the delinquent officer. After regular inquiry starts, this document is of no substance whatsoever and the very obvious reason is that in the regular inquiry the delinquent officer has all the right to make and submit his defence.

9. In the result, this writ petition fails and the same is dismissed.

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